IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL NO. 1056 OF 1985

For Approval and Signature:

HONOURABLE MR.JUSTICE R.S.GARG

==========

1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the Civil Judge ?

==========

GUJARAT STATE ROAD TRANSPORT CORPORATION - Appellant(s)
Versus
KEROLINE S. BHATIA & ORS. - Respondent(s)

==========

Appearance :
Ms. Jyoti Mehta for Shri Hardik C. Rawal for Appellant(s).
None for Respondent(s) : 1 - 6.
Ms. Archana Acharya for Respondent(s) : 7.

==========

CORAM : HONOURABLE MR.JUSTICE R.S.GARG

Date : 11/07/2007

ORAL JUDGMENT

The appellant-Gujarat State Road Transport Corporation, being aggrieved by the award dated 31st July, 1984 passed by the

learned Motor Accident Claims Tribunal No.2 (Main), Ahmedabad in M.A.C.P. No.120 of 1982, is before this Court challenging the liability so also the quantum.

2. The facts necessary for disposal of this appeal are that the dependents of Sharadbhai Wadia, who died in an accident, filed the claim petition seeking an amount of Rs.2 Lakhs on the ground that the driver of the bus owned by the appellant was driving rashly and negligently and he crushed the deceased under the left rear wheel of the offending bus.

2.1 The appellant appeared before the learned Tribunal and filed the written statement submitting, *inter alia*, that when the bus was reaching near Shahibaugh Railway Crossing, the gate was likely to be closed and the scooter driver - Kamlesh A. Sheth, who was trying to hurriedly overtake the bus from the wrong side, dashed with the bus from the rear side, which resulted into fall of the pillion rider-Sharadbhai and as a result of rashness and negligence of his scooter driver - Kamlesh Sheth, the deceased – Sharadbhai came under the running wheels of the bus.

2.2 The learned Tribunal below, after recording the evidence and hearing the parties, came to the conclusion that the story put forth

by the appellant regarding overtaking from the wrong side was a concocted story. The learned Tribunal also observed that the driver of the scooter was neither rash nor negligent; it accordingly held the driver and the owner of the bus liable.

3. Ms. Jyoti Mehta, learned Counsel for the appellant- Gujarat State Road Transport Corporation, submits that the learned Tribunal below had not appreciated the facts in their true perspective and erred in finding the guilt with the driver of the bus. According to her, the evidence would clearly show that the bus was being driven at a very moderate speed, it was likely to reach the railway crossing, but, the scooter driver - Kamlesh Sheth, in his hurry to cross the gate before it is closed, drove in rash and negligent manner and dashed against the rear left side of the bus. She also submits that in case of a person aged 52 years , the multiplier of twelve could not have been applied.

4. Ms. Archana Acharya, learned Counsel for the Insurance Company of the scooter, however, submits that the findings do not call for any interference.

5. It is to be seen from the records that the pillion rider of the scooter was crushed under the rear left wheel, which would mean that the scooter was on the left side of the bus and at some point of time, the

scooter fell and thereafter, the bus had overrun the deceased. The claim made by the claimants was that the bus was driven rashly and negligently and in its attempt to overtake the scooter, it hit the scooterist, as a result of which the scooter fell down and thereafter, the bus crushed the pillion rider. The defence of the present appellant was that the scooter dashed against the left rear side of the bus and thereafter, the scooter and the pillion rider fell on the ground and were crushed under the rear left wheel.

6. It would be a common knowledge that when a scooter would dash against a running body like a bus, as a result of the dash, it would be thrown on the other side because the principle of force is "Every action has an equal opposite reaction". If a person hits the rear left side of the bus, then, he would be thrown away from the bus. Unless it is the case of the party that instead of hitting the bus on the left rear side, the scooterist and the pillion rider straightway went under the body of the bus, the other possibility projected by the claimants appears to be more reasonable and justifiable because their case is that they were dashed, as a result of which the scooter fell on the ground, the pillion rider had also fallen to the ground and thereafter, the bus had crushed him under the wheels. The learned Tribunal below, in the opinion of this Court, has not committed any wrong in finding the driver of the bus guilty of rash and negligent driving. The findings deserve to and are,

accordingly, confirmed.

7. So far as application of the multiplier is concerned, the learned Tribunal below has given valid reasons for applying the multiplier of twelve. In case of a person of 52 years' age, it would all depend upon the facts of the case. In a given case, if the Court exercises its discretion by applying the multiplier of twelve, then, it cannot be argued before the Appellate Court that the multiplier should be reduced to ten only. The dependency figure was taken to be Rs.10,800/- per year. If the multiplier of ten is applied, the total difference would be Rs.21,600/-. I pose a question to myself that in case of an accident of the year 1982 where the award was made in the year 1984, should the High Court, after lapse of twenty five years, interfere, that too, for a small sum of Rs.21,600/-. The answer is no.

8. I find no reason to interfere. The appeal deserves to and is, accordingly, dismissed. No costs.

[R.S.Garg, J.]

*kamlesh**